UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

S & L VITAMINS, INC., Plaintiff, - vs. - AUSTRALIAN GOLD, INC., Defendant.	CIVIL ACTION NO. 05-CV-1217 (JS) (MLO) **ANSWER TO SECOND AMENDED COUNTERCLAIMS AND AMENDED THIRD PARTY COMPLAINT**
AUSTRALIAN GOLD, INC., Third Party Plaintiff, - vs. - LARRY SAGARIN AND JOHN DOES 1-10, Third Party Defendants.	

Plaintiff/Counterclaim Defendant S&L Vitamins, Inc. and Third Party Defendant Larry Sagarin (collectively herein after "S&L"), by counsel, for their Answer, hereby state as follows:

THE PARTIES

1. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 1 of the Counterclaim and therefore denies the same.

2. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 2 of the

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Counterclaim and therefore denies the same.

3. S&L admits that a list of trademark-related documents is attached. These documents speak for themselves; S&L is without sufficient information or knowledge as to the rest of the allegations contained in Paragraph 3 of the Counterclaim and therefore denies the same.

4. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 4 of the Counterclaim and therefore denies the same.

5. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 5 of the Counterclaim and therefore denies the same.

6. S&L admits that a list of copyright registration documents is attached. These documents speak for themselves; S&L is without sufficient information or knowledge as to the rest of the allegations contained in Paragraph 6 of the Counterclaim and therefore denies the same.

7. S&L admits that it does business on the internet and a retail location in Lindenhurst, but denies that it does business at the Miller Place location.

8. S&L admits that it sells Products but denies the rest of the allegations in Paragraph 7 of the Counterclaim.

9. S&L denies that Larry Sagarin is the owner of S&L Vitamins.

10. Admitted.

11. Denied.

JURISDICTION AND VENUE

12. Admitted.

13. Admitted.

AUSTRALIAN GOLD'S DISTRIBUTION SYSTEM

14. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 14 of the Counterclaim and therefore denies the same.

15. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 15 of the Counterclaim and therefore denies the same.

16. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 16 of the Counterclaim and therefore denies the same.

17. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 17 of the Counterclaim and therefore denies the same.

18. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 18 of the Counterclaim and therefore denies the same.

19. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 19 of the Counterclaim and therefore denies the same.

20. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 20 of the Counterclaim and therefore denies the same.

21. S&L admits that what purports to be a Distributor Agreement is attached as an exhibit; this document speaks for itself. S&L is without sufficient information or knowledge as to the other allegations contained in Paragraph 21 of the Counterclaim and therefore denies the same.

22. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 22 of the Counterclaim and therefore denies the same.

23. The Distributor Agreement is a document that speaks for itself. Any other allegation in pargraph 23 contrary to the document is denied.

24. The Distributor Agreement is a document that speaks for itself. S&L is without sufficient information or knowledge as to the rest of the allegations contained in Paragraph 24 of the Counterclaim and therefore denies the same.

25. The Distributor Agreement is a document that speaks for itself. Any other allegation in pargraph 25 contrary to the document is denied.

26. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 26 of the Counterclaim and therefore denies the same.

27. S&L admits that Australian Gold has sent cease and desist letters, terminated distributors, and filed lawsuits, but denies that the parties to these lawsuits "interfered" with defendant's distribution system.

28. Denied.

29. Admitted.

30. S&L admits that it has a retail location in Lindenhurst, but denies that it has a location at Miller Place. The website printout is a document which speaks for itself, and S&L denies any other allegation in pargraph 30 contrary to the document.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted that S&L Vitamin's website is identified in the "Sponsor Results" on Yahoo! The website printout is a document which speaks for itself, and S&L denies any other allegation in pargraph 35 contrary to the document.

36. Admitted that S&L Vitamin's website is identified in the "Sponsor Results" on Yahoo! The website printout is a document which speaks for itself, and S&L denies any other allegation in pargraph 35 contrary to the document.

37. Admitted that plantiffs are using Australian Gold's

ntellectual property on their website, but any allegation that this is to sell lotions that compete with defendant's products is denied.

38. S&L admits that it used Australian Gold's Marks on its website, but not that it used them in metatags.

39. Denied.

40. S&L admits that it advertised and displayed Australian Gold products for sale by displaying a photograph and description of the Product, but denied that this is "Australian Gold's artwork."

41. Denied.

42. S&L admits that it displays its own photographs of the Products on its website; the exhibits speak for themselves. S&L denies all allegations and characterizations of its activities contained in Paragraph 42 of the Counterclaim.

43. Admitted.

44. Denied.

45. Denied.

46. S&L admits that it received a cease and desist letter, the contents of which speak for themselves, and that its counsel received a blank copy of what purported to be a Distributorship Agreement.

47. S&L admits that it purchases and sells its Products on its website, but denies that it has refused to disclose its

sources, and denies the other allegations and characterizations of its activities in Paragraph 47 of Defendant's Counterclaim.

48. S&L admits that it has sold Products in Europe, but denies the other allegations in Pargraph 48 of the Counterclaim.

49. Denied.

COUNT I – COPYRIGHT INFRINGEMENT

50. S&L incorporates by reference Paragraphs 1-49 of its Answer as if fully set forth herein.

51. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 51 of the Counterclaim and therefore denies the same, except to the extent that the documents provided speak for themselves.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

COUNT II – TRADEMARK INFRINGEMENT

57. S&L incorporates by reference Paragraphs 1-56 of its Answer as if fully set forth herein.

58. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 58 of the Counterclaim and therefore denies the same.

59. S&L admits that it has used the Marks on its website, but denies the other allegations in Paragraph 59 of the Counterclaim.

60. Denied.

61. S&L admits that it has sold Products on the internet, but denies the other allegations in Paragraph 53 of the Counterclaim.

62. S&L admits that it has sold Products outside of the United States, but denies the other allegations in Paragraph 54 of the Counterclaim.

63. Denied.

64. Denied.

65. Denied.

COUNT II – UNFAIR COMPETITION UNDER THE lANHAM ACT

66. S&L incorporates by reference Paragraphs 1-65 of its Answer as if fully set forth herein.

67. Denied.

68. Denied.

69. Denied.

COUNT IV – TRADEMARK DILUTION

70. S&L incorporates by reference Paragraphs 1-69 of its Answer as if fully set forth herein.

71. S&L is without sufficient information or knowledge

as to the allegations contained in Paragraph 71 of the Counterclaim and therefore denies the same.

72. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 72 of the Counterclaim and therefore denies the same.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

COUNT V – TORTIOUS INTERFERENCE WITH CONTRACT

78. S&L incorporates by reference Paragraphs 1-77 of its Answer as if fully set forth herein.

79. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 79 of the Counterclaim and therefore denies the same.

80. Plaintiffs admit that they are currently aware of defendant's Distributorship Agreements, but deny that they were when this lawsuit commenced.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

COUNT VI – TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

87. S&L incorporates by reference Paragraphs 1-86 of its Answer as if fully set forth herein.

88. S&L is without sufficient information or knowledge as to the allegations contained in Paragraph 88 of the Counterclaim and therefore denies the same.

89. Denied.

90. Denied.

COUNT VII – UNFAIR COMPETITION AND DECEPTIVE BUSINESS PRACTICES

91. S&L incorporates by reference Paragraphs 1-90 of its Answer as if fully set forth herein.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. No response is required, because this count was dismissed by the Court.

98. Denied.

99. Paragraph 91 does not state an allegation for which response is necessary.

COUNT VII – STATE LAW TRADEMARK INFRINGEMENT

100. S&L incorporates by reference Paragraphs 1-99 of its Answer as if fully set forth herein.

101. Denied.

102. Denied.

COUNT VIII – FALSE ADVERTISING

103. S&L incorporates by reference Paragraphs 1-103 of its Answer as if fully set forth herein.

104. Denied.

105. No response is required, because this count was dismissed by the Court.

COUNT X – INJUNCTIVE RELIEF

106. S&L incorporates by reference Paragraphs 1-105 of its Answer as if fully set forth herein.

107. Denied.

108. Denied.

109. Paragraph 109 of Defendant's Counterclaim does not state allegations which require a response.

110. Paragraph 110 of Defendant's Counterclaim does not state allegations which require a response.

111. Paragraph 111 of Defendant's Counterclaim does not state allegations which require a response.

COUNT XI – CONSPIRACY AND CONCERT OF ACTION

112. S&L incorporates by reference Paragraphs 1-111 of its Answer as if fully set forth herein.

113. Denied.

114. Denied.

AFFIRMATIVE DEFENSES

FAILURE TO STATE A CLAIM

Defendant has failed to state a claim for which relief can be granted.

UNCLEAN HANDS

Defendant's claims are barred by the doctrine of unclean hands.

FAIR USE

Any use by plaintiffs of trademarks owned by defendant was fair use and not trademark use.

WHEREFORE, plaintiffs demand that defendant's counterclaim and third party claim be dismissed, with prejudice, in their entirety, and that plaintiffs be granted their attorneys fees and costs of suit.

Dated: April 7, 2006

Ronald Coleman
COLEMAN LAW FIRM
A Professional Corporation
Ronald D. Coleman (RC 3875)
David Stein (DS 2119)
Attorneys for Plaintiff
S & L Vitamins, Inc. and
Third Party Defendant
Larry Sagarin

CERTIFICATION OF SERVICE

The undersigned herewith certifies that on the date set forth below, a copy of the within **Answer to Second Amended Counterclaims and Amended Third Party Complaint** was served via Electronic Case Filing upon plaintiff's counsel:

Francis J. Earley, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue
New York, NY 10017

Dated: April 7, 2006 By:

Ronald Coleman (RC 3875)